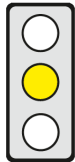


KEY ISSUES

Objective of the Directive: The Commission wants to revise the universal service rules in order to enable all EU citizens to have a broad-band connection at an “affordable price”.

Affected parties: Telecoms network operators and end-users.



Pro: Only allowing the universal service to be financed, in the future, by way of public funds – and no longer by way of apportionment – is appropriate because a reliable determination of the companies who should be subject to apportionment is not possible.

Contra: An obligation for universal service providers, to offer social tariffs below market prices in order to give low-income citizens a broadband connection, would be in breach of the freedom to conduct a business because this objective can also be achieved other than by way of a universal service, such as via vouchers or social benefits.

CONTENT

Title

Proposal COM(2016) 590 of 12 October 2016 for a **Directive** of the European Parliament and of the Council establishing the **European Electronic Communications Code**

Brief Summary

► Background

- The Commission wants to revise the EU regulatory framework for the telecommunications sector – Framework (2002/21/EC), Authorisation (2002/20/EC), Access (2002/19/EC) and Universal Service Directive (2002/22/EC). These Directives will be combined into one new Directive.
- The Directive comprehensively regulates the operation of telecoms networks and the supply of telecoms services. Particularly relevant are the provisions on
 - the "asymmetric" regulation of access to the network infrastructures of telecoms network operators with significant market power (see [cepPolicyBrief](#)),
 - the "symmetrical" – i.e. independent of market power – regulation of access and the regulation of termination charges (see [cepPolicyBrief](#)),
 - the supervision of the telecommunications industry (see [cepPolicyBrief](#)),
 - new types of communications services (OTT services) and end-user rights (see [cepPolicyBrief](#))
 - radio spectrum policy ([cepPolicyBrief](#) to follow) and
 - on universal services (this [cepPolicyBrief](#)).
- The Commission wants to introduce new rules on universal services for internet and voice communications securing a “basic universal service broadband” for all EU citizens in order to ensure their “participation in the digital economy and society”. (Explanatory Memorandum p. 21)

► Affordable internet access and voice communication services

- All end-users at a fixed location must have access at an “affordable price” to “available” internet access and voice communications services (“universal service”; Art. 79 (1)).
 - Access may be wired or wireless (Recital 196).
 - Member States can also extend these universal services to include non-fixed locations, i.e. for users who are on the move (Recital 196).
- Member States determine which services must be included in the internet universal service (Art. 79 (2) in conjunction with Annex V).
 - In this regard they must take account of which services are used by the majority of end-users in their territory.
 - Standard quality email, online banking, social media and video calls must form part of the internet universal service.
- Where universal services for low-income end-users, or end-users “with special social needs” - such as the elderly and end-users in rural or isolated places (Recital 200) - are not “affordable”, Member States can (Art. 80 (2) and (4))
 - require providers to offer tariffs below market prices to those end-users and
 - provide end-users with financial “support” for using universal services - such as in the form of vouchers (Recital 205).

The affected end-users have a right to contract with a universal service provider (Art. 80 (2)).

- Where the market or policy instruments – such as the use of EU support funds – fail to ensure the “availability” of internet access and/or voice communication services at a fixed location, Member States can designate one or more companies to provide these services. Designation takes place in a transparent and non-discriminatory procedure. (Art. 81, Recitals 209 and 210)

► **Payphones, directory enquiry services and directories**

- The universal service obligations set out in the Universal Services Directive (2002/22/EC) under which certain telecoms providers must provide public payphones, directory enquiry services and directories, are no longer included in the new Directive.
- Member States can retain them if the need for them is “duly demonstrated” and they still exist on entry into force of the Directive (Art. 82).

► **Financing universal services**

- Universal services must be financed via “public funds” (Art. 82). Apportioning the costs to all telecoms companies is no longer possible (Recital 221).
- Where a national regulatory authority (NRA) finds that a service provider is “subject to an unfair burden” as a result of the universal service obligation, the latter must be compensated, on application, for the net costs, “from public funds” (Art. 85).

Main Changes to the Status Quo

- Until now, the focus of universal services was their availability. In future, the focus will be affordability.
- Until now, Member States could decide whether universal services would be financed by way of public funds or by apportioning the costs to all telecoms companies. In future, only public funding will be allowed.
- Until now, universal service obligations applied to payphones, directory enquiry services and directories. In future, Member States can decide whether to retain or abolish these.

Statement on Subsidiarity by the Commission

According to the Commission, connectivity can help to prevent “isolation and depopulation” and link “peripheral to central regions of the EU”.

Policy Context

In a Communication in May 2015, the Commission announced a revision of the EU legal framework for the telecommunications sector [COM(2015) 192, see [cepPolicyBrief](#)].

Legislative Procedure

| | |
|-----------------|--|
| 12 October 2016 | Adoption by the Commission |
| Open | Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force |

Options for Influencing the Political Process

| | |
|--|---|
| Directorates General: | DG Communications Networks, Content & Technology |
| Committees of the European Parliament: | Industry, Research, Energy, Rapporteur: Pilar del Castillo Vera (EVP, ES); Internal Market and Consumer Protection, Rapporteur Dita Charanzová (ALDE, CZ) |
| Federal Ministries: | Federal Ministry for Economic Affairs |
| Committees of the German Bundestag: | Economic Affairs (leading); Transport, EU |
| Decision-making mode in the Council: | Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population) |

Formalities

| | |
|---------------------------------|--|
| Legislative competence: | Art. 114 TFEU (Internal Market) |
| Form of legislative competence: | Shared competence (Art. 4 (2) TFEU) |
| Procedure: | Art. 294 TFEU (ordinary legislative procedure) |

ASSESSMENT

Economic Impact Assessment

Ordoliberal Assessment

In 2016, 98% of EU households had access to a 2 MB/s broadband connection. That is very close to full network coverage. Comprehensive access to broadband, which was the objective of the universal services legislation, has therefore lost its practical relevance. It would therefore be appropriate to dispense with a universal service. Instead, the Commission seems to want to increase the demand for broadband connections with the new universal services requirement of “affordable prices”; 74% of EU households currently have a broadband connection. This is unconvincing: prices for internet access have fallen significantly in the last few years - not least due to the work of the regulatory authorities in promoting competition.

The obligation, proposed by the Commission, for universal service providers to offer social tariffs below market prices, cannot be justified by the social-policy objective of enabling citizens with social needs and/or a low-income to have access to an affordable broadband connection. This is because, on the one hand, the compensation procedures intended to provide reimbursement, in which providers can claim the net costs, are complex and inefficient. On the other hand, since there is almost total network coverage, **the social-policy objective can also be achieved other than by way of the universal service** in that impoverished end-users can be supported by way of public money, e.g. – as the Commission also suggests – **by way of vouchers or** – which the Commission does not suggest – **by benefit payments** which take account of the cost of a broadband connection.

Only allowing universal services to be financed in future by way of public funds - and no longer by way of apportioning the costs to all telecoms companies - **is appropriate because a reliable determination of the companies who should be subject to apportionment is not possible:** It is not just telecoms network operators who profit as regular universal services providers from a larger user base and who should therefore be considered as providers of finance for the universal service; this also applies to companies that do not provide a network but provide their services via the networks of other providers.

Irrespective of whether the universal service is financed by way of public funds or apportionment: those telecoms network providers who are called upon to provide the universal service should be reimbursed for all the net costs of the universal service not just for the “unfair burden”.

Legal Assessment

Legislative Competency

The Directive is correctly based on the internal market competence (Art. 114 TFEU) because above all the financial burden of the universal service for telecoms network providers may give rise to distortions of competition.

Subsidiarity and Proportionality with Respect to Member States

Unproblematic.

Compatibility with EU Law in other Respects

The obligation, applicable to companies that provide internet access and voice communications services, to enter into a contract, as well as the possibility of imposing reasonable universal service obligations to ensure the availability of universal services, do not, from a formal legal perspective, breach the fundamental freedom to conduct a business (Art. 16 CFR). Although the area of protection includes freedom of contract and thus the freedom to choose one’s contractual partner and to determine the content of the contract, including prices, the legislator’s aim is to ensure, with the aid of the universal service, “participation in the digital economy and society” for all EU citizens. The measures are suitable for that purpose. No less stringent measures are apparent. They are also proportionate because the legislator is pursuing an important public service objective.

An obligation to offer social tariffs below market prices would breach the freedom to conduct a business (Art. 16 CFR). Although this obligation is suitable for achieving the social-policy objective, direct social-policy measures provide a less stringent method. The proposed compensation for “unfair burdens” does nothing to change this.

Impact on German Law

The Telecommunications Act, particularly Sections 78 et seq. relating to the universal service, will have to be changed according to the requirements of the Directive.

Conclusion

Only allowing universal services to be financed in future by way of public funds – and no longer by way of apportionment – is appropriate because a reliable determination of the companies who should be subject to the apportionment is not possible. An obligation for universal service providers, to offer social tariffs below market prices in order to give low-income citizens a broadband connection, is in breach of the freedom to conduct a business because this objective can also be achieved other than by way of a universal service, such as via vouchers or social benefits.